**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**Criminal Misc. Appln. No. 431 of 2001**

Abhay Bhatia S/o Nihal Singh Bhatia
R/o Industrial Area, Ujjain Road,
Devas (M.P.) …….. Applicant

**Versus**

1. The State
2. Semi Das S/o B.G. Das
   R/o Village & Tehsil Chopara Patti,
   District Nainital.

……. Respondents

Mr. Zafar Siddiqui, Advocate for the applicant.
Mr. H.C. Pandey, Asstt. Govt. Advocate for the Sate.

**Hon. Prafulla C. Pant, J.**

Heard learned counsel for the applicant/ petitioner.

2. This petition is moved under Section 482 of the Code of Criminal Procedure, 1973 for quashing of criminal complaint case No. 20 of 1992 (renumbered as 282 of 1999), pending before the Civil Judge (Junior Division) / Judicial Magistrate, Nainital.

3. Brief facts of the case are that a complaint was filed by respondent No. 2 against the petitioner and three others alleging that the complaint had placed order for purchase of certain machine and parts thereof on 19.10.1987 from the petitioner and made payment of Rs. 14,400/- in all to the petitioner. The goods were to be supplied through Economic Transport Company to the complainant / respondent No. 2 and the respondent No. 2 failed to get delivered all the goods and, therefore, he sent notice to the petitioner on 22.09.1988. In reply to which the petitioner

informed vide letter dated 26.03.1988, that the goods were infact have been sent through Luxmi Transport Company and the complainant / respondent No. 2 should contact with said Company for the delivery of the goods. But on contracting the Luxmi Transport Company, he did not get the delivery in time and the complainant (present respondent No. 2) filed a complaint for summoning the accused for the offences punishable under Section 417 and 420 of the Indian Penal Code.

4. Notices were sent to the respondent No. 2 by this Court but even after being served with the notice, no one has turned up before this Court.

5. From the facts and circumstances of the case, it is clear that the only dispute between the parties is purely of civil nature. Annexure 4 is a copy of the consignment by which the petitioner has sent goods from Devas to Haldwani on 25.11.1987. The copy of the statement of P.W. 1, Semi Das (respondent No. 2) recorded on 06.10.1999 in the aforesaid complaint case, which is annexure 2-A to the affidavit, shows that the goods were delivered but it was short in supply. That further corroborates that the dispute is purely of civil nature between the parties and it is sheer misuse of the criminal Law to summon and try the petitioner in such a case. The impugned order dated 02.12.1999 passed by the Judicial Magistrate, Nainital summoning the accused in such a case is not sustainable in law and the complaint should have been dismissed under Section 203 of the Code of Criminal Procedure, 1973.

6. In view of above facts and circumstances of the case, this Court is of the opinion that the impugned criminal proceedings

are liable to be quashed. Therefore, the application under Section 482 of the Code of Criminal Procedure, 1973 is allowed. The criminal proceedings in complaint case No.20 of 1992 (renumbered as 282 of 1999); Semi Das vs. Garnett Tools and others), pending before the Civil Judge (Junior Division)/ Judicial Magistrate, Nainital are hereby quashed.

7. The criminal petition stands disposed of.

**(Prafulla C. Pant, J.)**

Dt. 21st December, 2005.
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